

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Insurance Licenses of  
Terry Louis Lemke and All Metro, Title, Inc.,  
the Real Estate Broker's License of Terry  
Louis Lemke, and the Mortgage Originators  
Licenses of Metropolitan Lending, Inc. and  
Metropolitan Lending, LLC

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Bruce H. Johnson (the ALJ) on Tuesday, April 28, 2009, at 9:30 a.m. at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The hearing was held pursuant to a Notice of and Order for Hearing and Order for Prehearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges (Notice of Hearing) issued on March 31, 2008, and an Amended Statement of Charges issued on April 23, 2008.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce ("Department"). The Respondent, Terry Louis Lemke, did not appear in person or by counsel. The Respondents All Metro Title, Inc., Metropolitan Lending, Inc., and Metropolitan Lending, LLC, were also not represented.<sup>1</sup> The hearing record closed when the hearing ended on April 28, 2009.

**STATEMENT OF ISSUES**

1. Should the Summary Suspension issued in this matter on March 31, 2008, be continued, pending final resolution of the Order to Show Cause of the same date; and

2. Did the Respondents Terry Louis Lemke, All Metro Title, Inc., and Metropolitan Lending, Inc.,<sup>2</sup> demonstrate untrustworthiness in violation of Minn. Stat. § 45.027, subd. 7(a)(4)?<sup>3</sup>

3. Did the Respondents Terry Louis Lemke and All Metro Title, Inc., demonstrate untrustworthiness, use dishonest practices, or improperly withhold, misappropriate, or convert money or properties or were they subjects of an injunction by

---

<sup>1</sup> See Findings of Fact No. 6.

<sup>2</sup> Respondent Metropolitan Lending, LLC, was discharged as a party to this proceeding by a Consent Order dated April 15, 2008.

<sup>3</sup> Unless otherwise specified, all references to Minnesota Statutes are to the 2006 edition, and all references to Minnesota Rules are to the 2007 edition.

a court of competent jurisdiction in violation of Minn. Stat. § 60K.43, subd. 1(4), (8), and (15)?

4. Did the Respondents Terry Louis Lemke and All Metro Title, Inc., engage in unfair and deceptive acts or practices in violation of Minn. Stat. § 72A.20, subd. 18?

5. Did Respondent Terry Louis Lemke engage in a fraudulent, deceptive, or dishonest practice, demonstrate untrustworthiness, or commingle property trust funds with his own in violation of Minn. Stat. §§ 82.35 and 82.41?

6. Did Respondent Terry Louis Lemke fail to observe high standards of commercial honor and just and equitable principles of trade in violation of Minn. R. 2795.1000?

7. If the Respondents committed one or more of the violations set forth above, is it in the public interest for the Commissioner to enter an order revoking all licenses issued by the Department to the Respondents and/or assessing the Respondents with civil penalties?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On April 1, 2008, a copy of the Notice of Hearing was delivered via first class mail to Terry Louis Lemke and to All Metro Title, Inc., and Metropolitan Lending, Inc., at the addresses set forth in the Certificate of Service attached hereto and as further appears from an Affidavit of Service by First Class Mail on file herein. Those addresses were the most recent addresses that the Respondents had provided to the Department in connection with their current licensures.

2. The undersigned Administrative Law Judge subsequently conducted a hearing in this matter at 9:30 a.m. on January 14, 2009, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The Department and the Respondents Terry Louis Lemke, All Metro Title, Inc., and Metropolitan Lending, Inc., all appeared at that hearing. At the request of all of the parties, the ALJ continued the hearing to a later date to enable the parties to consummate a settlement of the issues raised in this proceeding.

3. The parties were subsequently unable to consummate a settlement, and by Order issued on March 10, 2009, the ALJ ordered the hearing to resume at 9:30 a.m. on Tuesday, April 28, 2009, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. That Order specifically provided:

(2) That pursuant to Minn. R. 1400.6000, failure by the Respondents to appear at the hearing shall be deemed a default, upon which the allegations of or the issues set out in the notice of and order for hearing shall be taken as true or deemed proved without further evidence.

4. Additionally, the Notice of Hearing contained the following "Additional Notice":<sup>4</sup>

Respondents' failure to appear at the contested case hearing and/or prehearing conference may result in a finding that the Respondents are in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.

5. The Respondents did not appear at April 28, 2009 hearing, did not obtain the ALJ's prior approval to be absent from that hearing, and did not request a continuance or any other relief.

6. Because Respondents failed to appear at the April 28, 2009 hearing, they are in default.

7. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of Hearing and the Amended Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 45.027, subds. 6 and 7 and 14.50.

2. Respondents received due, proper and timely notice of the charges against them and of the time and place of the hearing, and the Department has complied with all procedural requirements of law and rule. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

4. The Respondents are in default herein as a result of their failure, without the ALJ's prior consent, to appear at the April 28, 2009, hearing.

5. The Respondents Terry Louis Lemke, All Metro Title, Inc., and Metropolitan Lending, Inc., demonstrated untrustworthiness in violation of Minn. Stat. § 45.027, subd. 7(a)(4).

---

<sup>4</sup> Notice of Hearing at p. 6.

6. The Respondents Terry Louis Lemke and All Metro Title, Inc., demonstrated untrustworthiness, used dishonest practices, and improperly withheld, misappropriated, or converted money or properties in violation of Minn. Stat. § 60K.43, subd. 1(4) and (8). They were also subjects of an injunction by a court of competent jurisdiction in violation of Minn. Stat. § 60K.43, subd. 1 (15).

7. The Respondents Terry Louis Lemke and All Metro Title, Inc., engaged in unfair and deceptive acts or practices in violation of Minn. Stat. § 72A.20, subd. 18.

8. Respondent Terry Louis Lemke engaged in a fraudulent, deceptive, or dishonest practice, demonstrated untrustworthiness, and commingle property trust funds with his own in violation of Minn. Stat. §§ 82.35 and 82.41?

9. Respondent Terry Louis Lemke failed to observe high standards of commercial honor and just and equitable principles of trade in violation of Minn. R. 2795.1000?

10. Minn. Stat. §§ 45.027, subd. 7(a)(2), empowers the Commissioner to suspend or revoke licenses issued to the Respondents by the Department, if the Commissioner concludes that the Respondents have violated Minn. Stat. §§ 45.027, subd. 7(a)(4); 60K.43, subd. 1; 72A.20, subd. 18; 82.35; 82.41; or Minn. R. 2795.1000.

11. Minn. Stat. § 45.027, subd. 6, empowers the Commissioner also to impose a civil penalty upon the Respondent, in an amount not to exceed \$10,000 per violation, as a result of the Respondent's violations of Minn. Stat. §§ 332.33 and 332.37(8), (10), and (17).

12. Disciplinary action against the Respondents is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge respectfully RECOMMENDS that the Commissioner of the Minnesota Department of Commerce take adverse action against Respondents' licenses, censure Respondents, and/or impose a civil penalty upon Respondents.

Dated: April 29, 2009

s/Bruce H. Johnson  
BRUCE H. JOHNSON  
Assistant Chief Administrative Law Judge

Recorded digitally. No transcript prepared.

## **NOTICES**

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101, telephone (651) 296-3528, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the negative licensing action, if any, to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1 (2006), the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first class mail.